

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
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JOHN E. and LINDA KRYSTEK,

Appellants,

vs.

ARIZONA DEPARTMENT OF REVENUE,

Appellee.

Docket No. 1935-04-AFTC

NOTICE OF DECISION:
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

As part of an alternative fuel program intended to improve Arizona's air quality, the State legislature enacted Senate Bill ("SB") 1504¹ in April 2000 ("April Law"), to expand and modify tax credits for the purchase, conversion or lease of Alternative Fuel Vehicles ("AFVs"). The April Law provided a tax credit for 100% of the cost of converting a conventional, gasoline-fueled vehicle to an AFV and an additional credit of, typically, 30% to 40% of the purchase price of the AFV.

On December 4, 2000, the Legislature enacted SB 1004² ("December Law") to retroactively adjust and limit some of the benefits originally available under the April Law. Among other changes, the December Law required the taxpayer be in possession of or have paid in full for the AFV *before* December 1, 2000. The governor signed the legislation into law on December 14, 2000.

¹ This is the prior version of A.R.S. § 43-1086.

² This is the current version of A.R.S. § 43-1086.

1 On October 6, 2000, John and Linda Krystek ("Appellants") ordered a 2001 Chevrolet Silverado
2 pick-up from Sands Chevrolet for \$29,776.74, and a \$7,500 propane fuel conversion that allowed the
3 vehicle to operate on either gas or propane. Appellants paid 10 percent down on the cost of the vehicle
4 and the conversion. Appellants obtained financing and paid the balance of the purchase price to the
5 dealer on December 1, 2000. The vehicle was registered in December 2000 and the conversion was
6 completed on December 13, 2000. Appellants filed an application for the alternative fuel tax credit with
7 the Arizona Department of Commerce Energy Office January 2, 2001. The application was denied.

8 In February 2003, Appellants filed an amended return seeking a refundable credit of \$26,408 for
9 the AFV. The Arizona Department of Revenue (the "Department") denied the refund request. Appellants
10 timely protested the refund denial to the Department's hearing officer who upheld the denial. Appellants
11 then protested the hearing officer's decision to the Director of the Department who affirmed the hearing
12 officer's decision. The Department denied the refund claim and Appellants now timely appeal to this
13 Board.

14 DISCUSSION

15 The issue before the Board is whether Appellants are entitled to the credit claimed. A tax credit is
16 a matter of legislative grace and is not a matter of taxpayer right. Tax statutes are strictly construed
17 against a party who claims a credit. *Davis v. Arizona Dep't of Rev.*, 197 Ariz. 527, 529-30, 4 P.3d 1070,
18 1072-73. (App. 2000).

19 It is undisputed that the vehicle at issue was neither paid for in full nor in the Appellants'
20 possession prior to December 1, 2000. Nonetheless, Appellants contend that they are entitled to the
21 refund. Appellants argue that their participation in the State's alternative fuel tax credit program under the
22 April Law created a contract between Appellants and the State. They contend they relied on and
23 complied with the requirements of this contract and that the retroactive amendment of the April Law in
24 December unconstitutionally impaired that contract.
25

1 The Board understands Appellants' frustration in this situation and is sympathetic, but the Arizona
2 Court of Appeals has recently settled this issue. *See, Baker v. Dep't of Rev.*, CA-TX 03-0006 (App.
3 February 3, 2005).

4 In *Baker*, the court held that no contract was created under the April Law ; thus, the December
5 Law did not unconstitutionally impair a contract. *Id.*, slip op. at 5. The court further found that the
6 retroactive application of A.R.S. § 43-1086 did not violate any due process rights. (*Id.*, slip op. at 12).

7 For the foregoing reasons, Appellants are not entitled to the refund claimed.³

8 CONCLUSIONS OF LAW

9 Appellants have not satisfied the requirements of the December Law; therefore, they are not
10 entitled to the refund claimed. *See*, SB 1004; *Davis v. Arizona Dep't of Rev.*, 197 Ariz. 527, 529-30, 4
11 P.3d 1070, 1072-73. (App. 2000); *Baker v. Dep't of Rev.*, CA-TX 03-0006 (App. February 3, 2005).

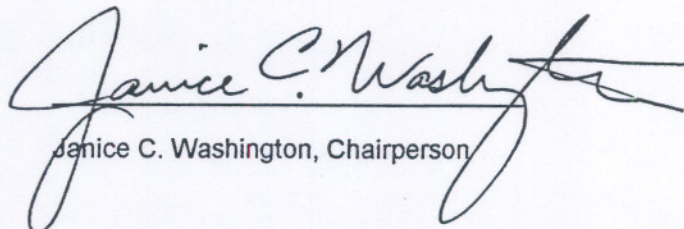
12 ORDER

13 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
14 Department is affirmed.

15 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
16 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

17 DATED this 23rd day of August , 2005.

18 STATE BOARD OF TAX APPEALS

19 
20 Janice C. Washington, Chairperson
21
22

23 JCW:ALW

24 CERTIFIED

25
³ Appellants noted the Department's delay in processing this case; however, that delay had no impact on the outcome of this appeal.

Copies of the foregoing
Mailed or delivered to:

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